



are citizens and residents one of the following: the States of Michigan, Indiana or California, or Canada.

2. Upon information and belief, Defendant Custom Nutritional Laboratories, L.L.C. ("CNL") is a Texas limited liability company with its principal place of business located at 2055 Luna Road, Suite 100, Carrollton, Texas 75006 and a registered agent address of 5526 Stonegate Road, Dallas, Texas 75209. Upon information and belief, none of the members of CNL are citizens or residents of the States of Michigan, Indiana or California, or Canada.

3. This Court has personal jurisdiction over CNL because, upon information and belief, CNL does business within the State of Michigan, and is engaged in continuous and systematic business within the Eastern District of Michigan, including the commission of the wrongful acts alleged in this Complaint. Therefore, CNL is subject to the personal jurisdiction of this Court.

4. This Court has jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and supplemental and pendent jurisdiction 28 U.S.C. § 1367, as Living Essentials brings claims under and pursuant to the federal Lanham Act, 15 USC § 1051, et seq. This Court also has subject matter jurisdiction as the amount in controversy exceeds \$75,000 exclusive of interest, costs, and fees and by virtue of the diversity of the parties.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400, because a substantial part of the events, acts and omissions giving rise to the action occurred in this district, and CNL does substantial business in this district, and is subject to personal jurisdiction in this district.

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**General Allegations**

6. Living Essentials develops and markets energy drinks including without limitation an energy drink bearing the trademark 5 HOUR ENERGY (hereinafter the "5-hour Energy drink").

7. Living Essentials sells its 5-hour Energy drink at a variety of drug, grocery, health and convenience stores throughout the United States and Canada. Living Essentials has federal trademark registration for its 5 HOUR ENERGY mark (Registration No. 3003077) (the "Mark").

8. Living Essentials has a substantial proprietary interest in the Mark, allocates significant resources to advertising its product associated with the Mark, and has through time and effort developed a strong public awareness and brand recognition of its Mark.

9. Living Essentials also has a substantial proprietary interest in trade secrets relating to its 5-hour Energy drink and takes appropriate and reasonable measures to guard the secrecy of its trade secrets.

10. Upon information and belief, CNL is engaged in the business of contract manufacturing and packaging products including energy drinks according to provided specifications. Pursuant to agreement CNL is a manufacturer and packager of the 5-hour Energy drink for Living Essentials.

11. Living Essentials and CNL first entered into a verbal contract in 2004, providing for CNL to manufacture and package the 5-hour Energy drink for Living Essentials. At or around that time, the parties executed a Confidentiality Agreement, a copy of which is in the possession of CNL.

12. On or around January 29, 2007, Living Essentials and CNL memorialized their relationship and entered into a Manufacturing Agreement, a copy of which is in the possession

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of CNL. At or around that same time, the parties also incorporated a "Standard Terms and Conditions of Sale" document by reference into the Manufacturing Agreement, a copy of which is in the possession of CNL.

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13. Pursuant to the Manufacturing Agreement, Living Essentials engaged CNL to manufacture the 5-hour Energy drink. Living Essentials agreed to provide CNL with product formula, manufacturing procedures, and packaging materials and specifications. Packaging materials included bottles, caps, labels and the like.

14. In exchange, CNL was to manufacture energy drinks, package same according to the specifications provided, and ship the finished product back to Living Essentials, all while maintaining confidentiality and protecting Living Essentials' Mark and quality of product. Living Essentials was to purchase at least 1,500,000 two-ounce bottles of 5-hour Energy from CNL per calendar quarter at agreed-upon prices.

15. The Manufacturing Agreement also included a Non-Compete Clause that precluded CNL from manufacturing or formulating any liquid energy drink in two fluid-ounce packaging, excluding drinks from several companies specifically listed in Appendix A of the Manufacturing Agreement, or those for sale through the Network Marketing Channel, which Defendant CNL fraudulently led Living Essentials to believe were not competitive with 5-hour Energy.

16. In good faith reliance on and according both to the Confidentiality and Manufacturing Agreements, Living Essentials supplied confidential trade secret information to CNL, including but not limited to the formulae, packaging and related materials for the 5-hour Energy drink, as well as specific criteria, specifications and energy formulae and/or recipe information according to which CNL was to manufacture, prepare, assemble, and package the 5-hour Energy drink. Living Essentials carefully developed these criteria, specifications, and

related energy formulae and/or recipe information over time and provided them to CNL on a confidential basis for the sole and exclusive purpose of performing under the parties' Manufacturing and Confidentiality Agreements.

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17. In violation of the Confidentiality and Manufacturing Agreements and applicable law, CNL misappropriated Living Essentials' trademark and trade secrets, and have without permission and in breach of contracts manufactured and packaged two fluid-ounce energy drinks that directly compete with Living Essentials' 5-hour Energy, including but not limited to On Go and/or NR-GIZE energy drinks, which are substantially similar in all material respects to Living Essentials' 5-hour Energy drink.

18. Upon information and belief, CNL converted and/or co-mingled the bottles, caps, labels and other packaging-related materials supplied by Living Essentials and used these materials to manufacture and package the product of Living Essentials' competitors without the permission of Living Essentials and without compensating Living Essentials, and in breach of the various contracts alleged in this Complaint.

19. Upon information and belief, CNL began to sell and/or distribute some of Living Essentials' product to other third-parties.

20. Upon information and belief, CNL has used, and continues to use, Living Essentials' trade secrets without express or implied consent in circumstances where, at the time of disclosure or use, CNL knew or had reason to know that its knowledge of Living Essentials' trade secrets were acquired under circumstances giving rise to a duty to maintain the secrecy of Living Essentials' trade secrets.

21. Upon information and belief, CNL has misappropriated and/or is currently misappropriating the confidential trade secret information of Living Essentials, which wrongful conduct has allowed CNL and/or others with whom CNL has business relationships to directly

compete with Living Essentials on an expedited basis, to operate more efficiently and profitably, and to develop a customer product base that it otherwise would not be able to develop or, at a minimum, would have taken years to develop thereby saving many thousands of dollars, time, and effort. These actions are causing monetary and irreparable damage to Living Essentials.

22. In addition, CNL admitted to Living Essentials that its agents, employees, or other representatives outright stole and pilfered large quantities of Living Essentials' product, and/or stole and pilfered its packaging for the use of illegally selling the 5-hour Energy drink that may not meet the strict and confidential quality control specifications for the drink. Thus, Living Essentials' trademarked product is and has been offered for sale on the market by unauthorized parties at prices far below that which Living Essentials has approved, causing not only monetary damage but also exposing Living Essentials to additional liability for product in the marketplace to which it has no control over the content of the product, and eroding Living Essentials' pricing structure with its other customers.

23. CNL also has failed to account to Living Essentials for a significant amount of Living Essentials' trademarked product that was in the exclusive custody and control of CNL. Upon information and belief, CNL and/or its agents or employees have wrongfully used this product for their own purposes and/or failed to maintain control over this product, resulting in damage to Living Essentials as alleged in this Complaint.

24. CNL also presently has exclusive custody and control over approximately \$190,000 of Living Essentials' product and nearly \$340,000 of finished products. This Living Essential product is accounted for, but CNL is holding shipment and in bad faith will not release it to Living Essentials.

25. On or around October 2, 2007, Living Essentials Chief Financial Officer Matthew Dolmage visited CNL's Texas manufacturing and production facility and warehouse. Mr. Dolmage's observed serious and gross breaches of contract and other wrongdoing by CNL.

26. After observing CNL's manufacturing and production facility, Mr. Dolmage notified CNL of these breaches and wrongdoings, and also attempted to conduct his own accounting and discovered wide discrepancy between what CNL stated and the actual count of product and packaging material at the facility.

27. In addition, and incredibly, during a random inspection of product that Defendant CNL had packaged and manufactured, Living Essentials discovered gross deviations in product quality, all in contravention of the specific controls and specifications provided to CNL.

28. Living Essentials has repeatedly appealed to CNL in good faith to attempt to resolve these assorted issues short of Court involvement, without success.

#### **COUNT I – BREACH OF CONTRACT**

29. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.

30. CNL entered into contracts with Living Essentials, including but not limited to the Confidentiality and Manufacturing Agreements set forth above.

31. As set forth in more detail above, CNL materially breached the contracts, including but not limited to the obligations of confidentiality and non-competition, the warranties and provisions concerning quality control and security, and the restrictions on the use of Living Essential' Mark, products, packaging and materials.

32. As a direct and proximate result of CNL's breaches, Plaintiff Living Essentials has been damaged in an amount in excess of \$75,000, exclusive of interest, costs, and fees.

**COUNT II – UNJUST ENRICHMENT**

33. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.

34. CNL has received financial benefit from its sales or acquiescence to the sales of Living Essentials' products without Plaintiff's permission. As a result, CNL has been unjustly enriched and it is only fair and equitable for this Court to require Defendant to pay Plaintiff for the benefits that Defendant received from Plaintiff without a corresponding benefit.

35. As a direct and proximate result of Defendant CNL's wrongful conduct, Plaintiff Living Essentials has been damaged in an amount in excess of \$75,000, exclusive of interest, costs, and fees.

**COUNT III – TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY**

36. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.

37. CNL was aware that Living Essentials had business relationships and expectancies between Plaintiff and its customers, retailers, and distributors.

38. As set forth in more detail above, CNL intentionally and improperly interfered with the business relationships and expectancies between Plaintiff and its customers, retailers, and distributors by, among other things, wrongfully making and selling competing products and by making and/or allowing unauthorized sales of Plaintiff's products.

39. Plaintiff had a reasonable likelihood of future economic benefit from its business relationships and expectancies.

40. Defendant acted intentionally so as to, and did, interfere with Plaintiff's business relationships and expectancies, causing their breach, disruption, or termination.

41. As a direct and proximate result of Defendant's tortuous interference, Plaintiff has suffered substantial economic injury, loss of profits, loss of goodwill, harm to its business reputation, loss of esteem and standing in the community, and loss of business opportunities.

**COUNT IV – BREACH OF FIDUCIARY DUTIES**

42. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.

43. CNL was in a position of trust and confidence with Living Essentials and therefore owed Plaintiff Living Essentials fiduciary duties.

44. CNL breached those duties as more fully discussed above.

45. As a direct and proximate result of CNL's breach, Plaintiff Living Essentials has been damaged in an amount in excess of \$75,000, exclusive of interest, costs, and fees.

**COUNT V – BREACH OF THE IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING**

46. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.

47. Michigan law imposes an implied covenant of good faith and fair dealing on the parties' contracts.

48. As set forth above, CNL breached that covenant.

49. As a direct and proximate result of Defendant's breach, Plaintiff Living Essentials has been damaged in an amount in excess of \$75,000, exclusive of interest, costs, and fees.

**COUNT VI – MISAPPROPRIATION OF TRADE SECRETS**

50. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.

51. CNL owes contractual, common law, and statutory duties not to use or otherwise misappropriate the trade secrets of Living Essentials.

52. CNL violated the common law and the Michigan Uniform Trade Secrets Act, ("MUTSA") MCL § 445.1901 et seq., by misappropriating Living Essentials' trade secrets.

53. CNL's unauthorized use and/or misappropriation of Living Essentials' trade secrets and other proprietary confidential information has caused, and continues to cause, irreparable injury and damages to Living Essentials.

54. The misappropriation of Living Essentials' trade secrets by CNL was willful, malicious, and done with intent to injure Living Essentials and its business.

55. As a direct and proximate result of Defendant's misappropriation, Plaintiff Living Essentials has been damaged in an amount in excess of \$75,000, exclusive of interest, costs, and fees.

#### **COUNT VII – TRADEMARK INFRINGEMENT**

56. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.

57. Living Essentials has a federal registration for the Mark 5 HOUR ENERGY (Registration No. 3003077) (the "Mark). CNL's continued and unauthorized use of the Mark constitutes use in commerce, without consent, of reproductions, copies, or colorable imitations of the Mark owned and federally registered by Living Essentials.

58. Such use has caused actual confusion and is likely to continue causing confusion or mistake, or deception of the public. CNL's conduct constitutes trademark and certification mark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

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59. CNL's conduct, having been undertaken maliciously, fraudulently, deliberately, and willfully, and with knowledge of Living Essential's Mark, makes this an "exceptional" case within the meaning of Section 35 of the Lanham Act, 15 U.S.C. § 1117.

**COUNT VIII – UNFAIR COMPETITION**  
**IN VIOLATION OF SECTION 43(a) OF THE LANHAM ACT**

60. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.
61. Living Essentials has a federal registration for the Mark.
62. Living Essential has developed valuable goodwill associated with this Mark.
63. CNL has improperly used Living Essentials' Mark without the express permission of Living Essentials, thus causing confusion, mistake or deception regarding the source or origin of goods or services sold by Living Essentials.
64. Therefore, CNL's conduct violates Section 43(a)(1) and 43(a)(2) of the Lanham Act, 15 U.S.C. §§ 1125(a)(1) and 1125(a)(2).

**COUNT IX – REQUEST FOR ACCOUNTING**

65. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.
66. CNL has exclusive custody and control over thousands of dollars of Living Essentials' trademarked product and related raw and hard materials.
67. CNL stores Living Essentials trademarked product and related materials inappropriately proximately near to other companies' products. Living Essentials' trademarked product was mixed in with and/or used in production of, other companies' products, which are direct competitors of Living Essentials.
68. Living Essentials Chief Financial Officer Matthew Dolmage, after observing alarming problems with Defendant CNL's manufacturing and production facility, attempted to

conduct his own accounting and discovered wide discrepancy between what CNL stated and the actual count. The actual count was much less than what CNL reported.

69. Given all of the above, including without limitation Defendant CNL's violation of the Agreement's Non-Compete Clause, Living Essentials is justifiably concerned that it cannot, even with liberal discovery, reasonably be expected to ascertain and distinguish its raw and hard materials from those Defendant CNL has intermingled with those of Living Essentials' competitors for whom Defendant CNL also does business.

70. Living Essentials respectfully requests that this Court compel Defendant CNL to prepare, at its sole expense, a true and accurate audited accounting of all of the activities and assets of Defendant CNL.

#### COUNT X – DECLARATORY JUDGMENT

71. Plaintiff Living Essentials realleges and incorporates by reference all paragraphs above, as if fully set forth herein.

72. CNL has alleged that there are monies owing to CNL which it is claimed Living Essentials owes under the Manufacturing Agreement. Based on these allegations, and because of the disputes set forth in this Complaint, an actual case and controversy exists between the parties concerning performance and/or breaches of the contracts as issue in this Complaint.

73. Living Essentials should not be required to pay CNL such monies due to CNL's multiple material breaches, misappropriations, infringements, and fraudulent activities, all of which have substantially harmed and damaged Living Essentials in an amount far in excess of whatever monies it is claimed Living Essentials owes Defendant under the Manufacturing Agreement.

74. Therefore, there is a case of actual controversy between the parties pursuant to 28 U.S.C. § 2201.

## REQUEST FOR RELIEF

WHEREFORE, Living Essentials respectfully requests that this Court enter one or more orders and judgments granting the following relief:

A. Temporarily and then permanently enjoin Defendant from manufacturing, marketing or selling products or offering services based on or derived from Living Essentials' trade secrets and proprietary confidential information;

B. Temporarily and then permanently enjoin Defendant from manufacturing, marketing or selling products or offering services based on or derived from Living Essentials' registered trademarks;

C. Temporarily and then permanently enjoin Defendant from disclosing, communicating, using or otherwise misappropriating Living Essentials' confidential, proprietary business information and trade secrets;

D. Ordering Defendant to forthwith deliver to Living Essentials all materials in Defendant's possession, custody or control, the possession and/or use of which would violate Living Essentials' proprietary rights and/or the Confidentiality Agreement;

E. Ordering Defendant to prepare, at its sole expense, a true and accurate audited accounting of all of the activities and assets of Defendant CNL.

F. An award of compensatory damages, including income and profits, that Living Essentials has lost, and may lose in the future, as a result of Defendant's unlawful activities, including misappropriation of trade secrets and breach of contract, exclusive of interest and costs, as to be determined at trial in an amount in excess of \$75,000, exclusive of interest, costs, and fees;

G. An award of special damages and attorney's fees permitted by the Michigan Uniform Trade Secret Act, MCL § 446.1905;

H. An award of punitive damages against Defendant for the malicious misappropriation of Living Essentials' trade secrets;

I. An award of money damages against Defendant for unjust enrichment as a result of Defendant's misappropriation of Living Essentials' trade secrets and trademark;

J. An award of money damages against Defendant for breach of contract as a result of Defendant's breach of the parties' contracts;

K. An award of money damages against Defendant for breach of fiduciary duties for Defendant's breach of same;

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L. An award of money damages against Defendant for breach of Plaintiff's business expectancy;

M. An award of money damages against Defendant for breach of the implied covenant of good faith and fair dealing;

N. An award of costs, interest, and attorney's fees in an amount to be determined by the Court;

O. An award of compensatory damages arising out of Defendant's infringement and unfair competition, and that the award of compensatory damages be trebled pursuant to 15 U.S.C. §1117(a);

P. A declaratory judgment that Living Essentials does not owe CNL any monies under the Manufacturing Agreement because CNL has substantially harmed and damaged Living Essentials in an amount far in excess of whatever monies it is claimed Living Essentials owes Defendant under the Manufacturing Agreement.

Q. Any other relief the Court deems just and proper.

Respectfully submitted,

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**DEMAND FOR TRIAL BY JURY**

Plaintiff Living Essentials demands trial by jury in this action.

Respectfully submitted,

**Howard & Howard Attorneys, P.C.**



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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> INNOVATION VENTURES, L.L.C. d/b/a Living Essentials, a Michigan limited liability company		<b>DEFENDANTS</b> CUSTOM NUTRITION LABORATORIES, L.L.C., a Texas limited liability company	
<b>(b) County of Residence of First Listed Plaintiff</b> <u>Oakland County</u> (EXCEPT IN U.S. PLAINTIFF CASES)		<b>County of Residence of First Listed Defendant</b> <u>Carrolton, Texas</u> (IN U.S. PLAINTIFF CASES ONLY)	
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Howard & Howard Attorneys, P.C., Patrick M. McCarthy, 101 N. Main Street, Suite 300, Ann Arbor, MI 48104 - 734-222-1097		<b>NOTE: IN LAND CONDÉMNACTION CASES, USE THE LOCATION OF THE LAND INVOLVED.</b> <b>MAGISTRATE JUDGE WHALEN</b> Attorneys (If Known)	
<b>II. BASIS OF JURISDICTION</b> (Select One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Select One Box for Plaintiff and One Box for Defendant)	
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business In This State
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3 Foreign Nation
			<input type="checkbox"/> 6 <input checked="" type="checkbox"/> 6
<b>IV. NATURE OF SUIT</b> (Select One Box Only)			
<b>CONTRACT</b>		<b>TORTS</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<b>PERSONAL INJURY</b>	
<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury		<b>PERSONAL INJURY</b>	
<input type="checkbox"/> 410 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights		<b>PERSONAL PROPERTY</b>	
<b>REAL PROPERTY</b>		<b>CIVIL RIGHTS</b>	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<b>PRISONER PETITIONS</b>	
<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 520 habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	
<b>V. ORIGIN</b> (Select One Box Only)		<b>VI. CAUSE OF ACTION</b>	
<input checked="" type="checkbox"/> 1 Original Proceeding		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 1114(1) and 1125(a)(1) & (2) Brief description of cause: Trademark Infringement and Breach of Contract	
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> 
<b>VIII. RELATED CASE(S) IF ANY</b> (See instructions):		<b>CHECK YES only if demanded in complaint:</b> <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>DOCKET NUMBER</b>			
<b>DATE</b> November 9, 2007		<b>SIGNATURE OF ATTORNEY OF RECORD</b> 	
<b>FOR OFFICE USE ONLY</b>			
<b>RECEIPT #</b>		<b>AMOUNT</b>	
		<b>APPLYING IFF</b>	
		<b>JUDGE</b>	
		<b>MAG. JUDGE</b>	

## URSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

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